

House Bill 1551

By: Representatives Manning of the 32nd and Watson of the 91st

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," so as to change provisions relating to taxation of brownfields property which has been rehabilitated after a release of hazardous waste, hazardous constituents, or hazardous substances; to change provisions relating to preferential assessment of brownfields property for ad valorem tax purposes; to provide for an income tax credit with respect to certain expenses of rehabilitation of brownfields property; to provide for other related matters; to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," is amended by striking Code Section 48-5-7.6, relating to preferential assessment of brownfields property for ad valorem tax purposes, and inserting in its place a new Code section to read as follows:

"48-5-7.6.

(a)(1) For the purposes of this Code section, '~~brownfield~~ brownfields property' means tangible real property where:

(A) There has been a release of hazardous waste, hazardous constituents, ~~and~~ or hazardous substances into the environment; ~~and~~

(B) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the '~~Georgia Hazardous Site Reuse and Redevelopment Act,~~' as amended, 'Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and Environmental Justice Act,' has approved and not revoked said approval of the prospective ~~purchaser's~~ purchaser corrective action plan ~~or compliance status report~~ for such ~~brownfield~~ brownfields property; ~~and~~

(C) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, ~~the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended,~~ has issued and not revoked a ~~limitation of liability certificate for the prospective purchaser~~ brownfields certificate of compliance and no further action covenant; and

(D) The Environmental Protection Division of the Department of Natural Resources has certified eligible costs of remediation pursuant to subsection (j) ~~below~~ of this Code section.

(2) The preferential classification and assessment of ~~brownfield~~ brownfields property provided for in this Code section shall apply to all real property qualified by the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, ~~the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended,~~ and any subsequent improvements to said property.

(3) 'Eligible ~~brownfield~~ brownfields costs' means costs incurred after July 1, 2003, and directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, ~~the 'Hazardous Sites Reuse and Redevelopment Act,' as amended,~~ that are not ineligible costs.

(4) 'Ineligible costs' means expenses of the following types:

(A) Purchase or routine maintenance of equipment of a durable nature that is expected to have a period of service of one year or more after being put into use at the property without material impairment of its physical condition, unless the applicant can show that the purchase was directly related to the receipt of a limitation of liability, or the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the activities required for receipt of applicant's limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, ~~the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;~~

(B) Materials or supplies not purchased specifically for obtaining a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, ~~the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;~~

(C) Employee salaries and out-of-pocket expenses normally provided for in the property owner's operating budget (i.e. meals, fuel) and employee fringe benefits;

(D) Medical expenses;

(E) Legal expenses;

(F) Other expenses not directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, ~~the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;~~

(G) Costs arising as a result of claims for damages filed by third parties against the property owner or its agents should there be a new release at the property during or after the receipt of a limitation of liability;

(H) Costs resulting from releases after the purchase of qualified ~~brownfield~~ brownfields property that occur as a result of violation of state or federal laws, rules, or regulations;

(I) Purchases of property;

(J) Construction costs;

(K) Costs associated with maintaining institutional controls after the certification of costs by the Environmental Protection Division of the Department of Natural Resources; and

(L) Costs associated with establishing, maintaining or demonstrating financial assurance after the certification of costs by the Environmental Protection Division of the Department of Natural Resources.

(5) 'Local taxing authority' means a county, municipal, school district, or any other local governing authority levying ad valorem taxes on a taxpayer's property. If a taxpayer's property is taxed by more than one such authority, the term 'local taxing authority' shall mean every levying authority.

(6) 'Taxable base' means a value assigned to the ~~brownfield~~ brownfields property pursuant to the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(7) 'Tax savings' means the difference between the amount of taxes paid on the taxable base and the taxes that would otherwise be due on the current fair market value of the qualified ~~brownfield~~ brownfields property. Tax savings run with the qualified ~~brownfield~~ brownfields property regardless of title transfer and shall be available until the ~~brownfield~~ brownfields property is disqualified pursuant to subsection (e) ~~below~~ of this Code section.

(b) In order for property to qualify under this Code section for preferential assessment as provided for in subsection (c.4) of Code Section 48-5-7, the applicant must receive the certifications required for ~~brownfield~~ brownfields property as defined in paragraph (1) of subsection (a) of this Code section.

(c) Upon receipt of said certifications, a property owner desiring classification of any such contaminated property as ~~brownfield~~ brownfields property in order to receive the preferential assessment shall make application to the county board of tax assessors and include said certifications with such application. The county board of tax assessors shall determine if the provisions of this Code section have been complied with, and upon such determination, the county board of tax assessors shall be required to grant preferential assessment to such property. The county board of tax assessors shall make the

determination within 90 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Failure to timely make such determination or so notify the applicant pursuant to this subsection shall be deemed an approval of the application. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(d)(1) Property which has been classified by the county board of tax assessors as ~~brownfield~~ brownfields property shall be immediately eligible for the preferential assessment provided for in subsection (c.4) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The local taxing authority shall enter upon the tax digest as the basis or value of a parcel of ~~brownfield~~ brownfields property a value equal to the lesser of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time ~~the application for participation in the Hazardous Site Reuse and Redevelopment Program~~ was submitted to the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12; ~~the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended.~~ Property classified as ~~brownfield~~ brownfields property shall be recorded upon the tax digest as provided in this Code section for ten consecutive assessment years, unless sooner disqualified pursuant to subsection (e) of this Code section, and the notation '~~brownfield~~ brownfields property' shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The local taxing authority shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(e)(l) When property has once been classified and assessed as ~~brownfield~~ brownfields property, it shall remain so classified and be granted the preferential assessment until the property becomes disqualified by any one of the following:

1 (A) Written notice by the taxpayer to the local taxing authority to remove the
2 preferential classification and assessment;

3 (B) Sale or transfer of ownership to a person not subject to property taxation or making
4 the property exempt from property taxation except a sale or transfer to any authority
5 created by or pursuant to the Constitution of Georgia, statute, or local legislation,
6 including a development authority created pursuant to Code Section 36-62-4,
7 constitutional amendment, or local legislation, a downtown development authority
8 created pursuant to Code Section 36-42-4, an urban redevelopment agency created
9 pursuant to Code Section 36-61-18, a joint development authority created pursuant to
10 Code Section 36-62-5.1, or a housing authority created pursuant to Code Section 8-3-4;

11 (C) Revocation of a limitation of liability by the Department of Natural Resources. The
12 Department of Natural Resources has the authority to revoke a limitation of liability
13 pursuant to Article 9 of Chapter 8 of Title 12, ~~the 'Georgia Hazardous Site Reuse and~~
14 ~~Redevelopment Act,' as amended.~~ The sale or transfer to a new owner shall not operate
15 to disqualify the property from preferential classification and assessment so long as the
16 property continues to qualify as ~~brownfield~~ brownfields property, except as specified
17 in subparagraph (B) of this paragraph; or

18 (D) The expiration of ten years during which the property was classified and assessed
19 as ~~brownfield~~ brownfields property; or

20 (E) The tax savings accrued on the property equal the eligible ~~brownfield~~ brownfields
21 costs certified by the Environmental Protection Division of the Department of Natural
22 Resources and submitted to the local taxing authority.

23 (2) Except as otherwise provided in this Code section, if a property becomes disqualified
24 pursuant to subparagraph (C) of paragraph (1) of this subsection, the decertification shall
25 be transmitted to the county board of tax assessors by the Environmental Protection
26 Division of the Department of Natural Resources and said assessors shall appropriately
27 notate the property as decertified. Such property shall not be eligible to receive the
28 preferential assessment provided for in this Code section during the taxable year in which
29 such disqualification occurs.

30 (f) After a qualified ~~brownfield~~ brownfields property begins to receive preferential tax
31 treatment the property owner shall:

32 (1) In a sworn affidavit, report his or her tax savings realized for each year to the local
33 taxing authority. Such report shall include:

34 (A) The number of years preferential tax treatment pursuant to this Code section has
35 been received;

36 (B) Total certified eligible ~~brownfield~~ brownfields costs;

1 (C) Tax savings realized to date;

2 (D) Transfers of eligible ~~brownfield~~ brownfields costs, if any;

3 (E) Eligible ~~brownfield~~ brownfields costs remaining;

4 (2) In the tax year in which the taxes otherwise due on the fair market value of the
5 property exceed any remaining eligible ~~brownfield~~ brownfields costs, the taxpayer shall
6 pay the taxes due on the fair market value of the property less any remaining eligible
7 ~~brownfield~~ brownfields costs.

8 (g) A qualified ~~brownfield~~ brownfields property may be transferred or leased and continue
9 to receive preferential tax treatment if:

10 (1) The transferee or lessee of the property is an entity required to pay ad valorem
11 property tax on the qualified ~~brownfield~~ brownfields property or an interest therein;

12 (2) The transferee or lessee complies with all of the requirements of this Code section;

13 (3) The transferee or lessee meets the requirements of Code Section 12-8-206;

14 (4) The transferee or lessee continues any and all activities, if any are required, for the
15 continuation of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, ~~the~~
16 ~~'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended;~~

17 (5) The transferee or lessee and the transferor notify the local taxing authority with
18 respect to the transfer of the qualified ~~brownfield~~ brownfields property by filing a
19 separate copy of the transfer with the local taxing authority no later than 90 days
20 following the date of the transfer;

21 (6) Failure to timely notify one local taxing authority shall not affect any timely
22 notification to any other local taxing authority; and

23 (7) The transfer of property shall not restart, reset or otherwise lengthen the period of
24 preferential tax treatment pursuant to this Code section.

25 (h) A qualified ~~brownfield~~ brownfields property may be subdivided into smaller parcels
26 and continue to receive preferential tax treatment if:

27 (1) All of the requirements of subsection (g) ~~above~~ of this Code section are met; ~~and~~

28 (2) The transferee and transferor agree and jointly submit to the local taxing authority a
29 sworn affidavit stating the eligible ~~brownfield~~ brownfields costs being transferred to the
30 subdivided property, to wit:

31 (A) A transferor's report to the local taxing authority shall include:

32 (i) The total certified eligible ~~brownfield~~ brownfields costs for the qualified
33 ~~brownfield~~ brownfields property;

34 (ii) The tax savings realized to date;

35 (iii) The eligible ~~brownfield~~ brownfields costs being transferred;

(iv) The number of years of preferential tax treatment pursuant to this Code section has been received;

(v) The eligible ~~brownfield~~ brownfields costs remaining; and

(vi) A request to establish the taxable base of the transferred property and reestablish the taxable base for the retained property pursuant to paragraph (3) ~~below~~ of this subsection.

(B) Failure to file a sworn affidavit with one local taxing authority shall not affect any sworn affidavit submitted to any other local taxing authority;

(C) A transferee's first report to the local taxing authority shall include:

(i) A statement of the amount of the transferred eligible ~~brownfield~~ brownfields costs;

(ii) The number of years of preferential tax treatment the property received prior to transfer (carry over from transferor); and

(iii) A request to establish a taxable base for the property pursuant to paragraph (3) ~~below~~ of this subsection;

(D) Subsequent reports made by a transferee shall include the same information provided by property owners in paragraph (1) of subsection (f) of this Code section;

(3) The taxable base for the subdivided property shall be established by the local taxing authority based on the ratio of acres purchased to total acres at the time of the establishment of the taxable base for the entire qualified ~~brownfield~~ brownfields property. Said ratio shall be applied to the taxable base as recorded in the county tax digest at the time the application was received by the Environmental Protection Division for participation ~~in the Hazardous Site Reuse and Redevelopment Program~~ under Article 9 of Chapter 8 of Title 12. The taxable base on the retained qualified ~~brownfield~~ brownfields property shall be decreased by the amount of taxable base assigned to the subdivided portion of the property; and

(4) The subdivision of property shall not restart, reset, or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(i) In the year in which preferential tax treatment ends, the taxpayer shall be liable for any and all ad valorem taxes due on the property for which a certified eligible ~~brownfield~~ brownfields cost is not claimed as an offset.

(j) The Environmental Protection Division of the Department of Natural Resources shall review the eligible costs submitted by the applicant/~~taxpayer~~ and shall approve or deny those costs prior to those costs being submitted to the local tax authority. Eligible costs to be certified as accurate by the Environmental Protection Division shall be submitted by the applicant to the division at such time and in such form as is prescribed by the division.

1 Eligible costs may be submitted for certification only once for each assessment or
2 remediation undertaken pursuant to Article 9 of Chapter 8 of Title 12, ~~the 'Hazardous Sites~~
3 ~~Reuse and Redevelopment Act,' as amended.~~ The certification of costs shall be a decision
4 of the director and may be appealed in accordance with subsection (c) of Code Section
5 12-2-2.

6 (k) The taxing authority shall provide an appropriate form or forms or space on an existing
7 form or forms to implement this Code section.

8 (l) Taxpayers shall have the same rights to appeal from the determination of the taxable
9 base and assessments and reassessments of qualified ~~brownfield~~ brownfields property as
10 set out in Code Section 48-5-311.

11 (m) A penalty shall be imposed under this ~~subsection~~ Code section if during the special
12 classification period the taxpayer fails to abide by the corrective action plan. The penalty
13 shall be applicable to the entire tract which is the subject of the special classification and
14 shall be twice the difference between the total amount of tax paid pursuant to preferential
15 assessment under this Code section and the total amount of taxes which would otherwise
16 have been due under this chapter for each completed or partially completed year of the
17 special classification period. Any such penalty shall bear interest at the rate specified in
18 Code Section 48-2-40 from the date the special classification is breached.

19 (n) Penalties and interest imposed under this Code section shall constitute a lien against
20 the property and shall be collected in the same manner as unpaid ad valorem taxes are
21 collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction
22 wherein current use assessment under this Code section has been granted based upon the
23 total amount by which such preferential assessment has reduced taxes for each such taxing
24 jurisdiction on the property in question as provided in this Code section."

25 SECTION 2.

26 Said title is further amended by adding immediately after Code Section 48-7-40.26 a new
27 Code Section 48-7-40.27 to read as follows:

28 "48-7-40.27.

29 (a) This Code section shall be known and may be cited as the 'Georgia Brownfields
30 Investment Act.'

31 (b) The definitions of terms set out in Code Section 12-8-202 shall apply to this Code
32 section with additions as follows:

33 (1) 'Base investment' means the aggregate funds, net of grants from the state or a local
34 government, actually expended by a brownfields owner to remediate a brownfields
35 property in accordance with the provisions of the Georgia Brownfields Rescue,

1 Redevelopment, Community Revitalization, and Environmental Justice Act' as set out in
2 Article 9 of Chapter 8 of Title 12.

3 (2) 'Person responsible for remediation at a qualified brownfields property' or 'PRRQBP'
4 means the individual or entity who was responsible, pursuant to the terms of a
5 brownfields project agreement, for paying, and did, in fact, pay the cost of activities,
6 undertakings, materials, and supplies necessary to comply with an approved corrective
7 action plan for a qualifying brownfields property.

8 (c) For any individual or business organization who was or is a PRRQBP and incurs costs
9 or makes expenditures in the context of a comprehensive response action or in relation to
10 the design and implementation of an approved corrective action plan at a qualified
11 brownfields property, there shall be allowed an income tax credit against the tax imposed
12 under this chapter which shall be calculated as follows:

13 (1) The PRRQBP shall be allowed a tax credit equal to 10 percent of the base investment
14 related to remediation of a qualifying brownfields property;

15 (2) If the base investment in this state is in a tier 1 or tier 2 county under Code Section
16 48-7-40, the PRRQBP shall be allowed an additional tax credit equal to 3 percent of such
17 base investment; and

18 (3) If Georgia residents are employed in the design of a comprehensive response action
19 or in the implementation of an approved action plan, the PRRQBP shall be allowed an
20 additional tax credit equal to 3 percent of the total aggregate payroll of Georgia residents.

21 (d) Where the amount of such credit or credits exceeds the PRRQBP's liability for income
22 taxes in a taxable year, the excess may be taken as a credit against such PRRQBP's income
23 tax liabilities in the next succeeding taxable year.

24 (e) Any tax credits earned by a PRRQBP and previously claimed but not used by such
25 PRRQBP against its income tax may be transferred or sold in whole or in part by such
26 PRRQBP to another Georgia taxpayer, subject to the following conditions:

27 (1) Such PRRQBP may make only a single transfer or sale of tax credits earned in a
28 taxable year; however, the transfer or sale may involve one or more transferees;

29 (2) Such PRRQBP shall submit to the Department of Economic Development and to the
30 Department of Revenue a written notification of any transfer or sale of tax credits within
31 30 days after the transfer or sale of such tax credits. The notification shall include such
32 PRRQBP's tax credit balance prior to transfer, the credit certificate number, the
33 remaining balance after transfer, all tax identification numbers for each transferee, the
34 date of transfer, the amount transferred, and any other information required by the
35 Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the PRRQBP is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(5) A transferee shall have only such rights to claim and use the tax credit as were available to such PRRQBP at the time of the transfer; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(f) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) The credit may be taken beginning with the taxable year in which the PRRQBP has met the investment requirement. For each year in which such PRRQBP either claims or transfers the credit, the PRRQBP shall attach a schedule to the PRRQBP's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description and accounting of the qualified expenditures along with a certification of such expenditures from the Environmental Protection Division of the Department of Natural Resources;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

(C) The amount of tax credit claimed for the taxable year;

(D) Any tax credit previously taken by the PRRQBP against Georgia income tax liabilities or the PRRQBP's quarterly or monthly payments under Code Section 48-7-103;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the PRRQBP in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years;

(2) In the initial year in which the PRRQBP claims the credit granted in this Code section, the PRRQBP shall include in the description of the qualified expenditures required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed \$50,000.00 during such year; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the PRRQBP's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which

1 the investment occurred. No such credit shall be allowed the PRRQBP against prior
2 years' tax liability.

3 (g) The Environmental Protection Division of the Department of Natural Resources shall
4 determine through the promulgation of rules and regulations what projects qualify for the
5 tax credits authorized under this Code section. Certification shall be submitted to the state
6 revenue commissioner.

7 (h) The state revenue commissioner shall promulgate such rules and regulations as are
8 necessary to implement and administer this Code section.

9 (i) Any PRRQBP claiming, transferring, or selling the tax credit shall be required to
10 reimburse the Department of Revenue for any department initiated audits relating to the tax
11 credit. This subsection shall not apply to routine tax audits of a taxpayer which may include
12 the review of the credit provided in this Code section."

13 **SECTION 3.**

14 This Act shall become effective upon its approval by the Governor or upon its becoming law
15 without such approval only if there is enacted into law at the 2006 session of the General
16 Assembly of Georgia a bill which amends Article 9 of Chapter 8 of Title 12 of the Official
17 Code of Georgia Annotated so as to strike the current article and enact in its place the
18 "Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and
19 Environmental Justice Act." If no such bill is enacted into law at the 2006 session of the
20 General Assembly, this Act shall not take effect.

21 **SECTION 4.**

22 All laws and parts of laws in conflict with this Act are repealed.